UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SHERI K. BOEHMER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:04 CV 577 HEA DDN
	)	
JO ANNE B. BARNHART, Commissioner of Social Security,	)	
	)	
Defendant.	)	

REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

This action is before the court for judicial review of the final decision of the defendant Commissioner of Social Security denying the application of plaintiff Sheri K. Boehmer for disability benefits under Title II of the Social Security Act (the Act), 42 U.S.C. §§ 401, et seq., and for supplemental security income (SSI) benefits under Title XVI of the Act, 42 U.S.C. §§ 1381, et seq. The action was referred to the undersigned United States Magistrate Judge for a recommended disposition under 28 U.S.C. § 636(b).

I. BACKGROUND

A. Plaintiff's Application and Medical Records

In January 2002, plaintiff, who was born in 1968, applied for disability and SSI benefits alleging she became disabled on December 26, 2001. Plaintiff alleges she is unable to engage in substantial, gainful employment due to birth defects, lower back and leg problems, and arthritis. (Tr. 56-61, 89-98, 129-32.)[1]

Plaintiff's relevant work history includes her most recent work as a waitress 24-30 hours per week. Plaintiff also worked as a truck

[1]The Disability Report--Adult (Tr. 89-98) is dated January 11, 2001. As there is no indication from the record that plaintiff filed her request for disability until January 2002, and there is a record of contact between plaintiff and the Social Security Administration on January 11, 2002 (Tr. 77-79), the undersigned believes the date is in error and should read January 11, 2002.

driver and as a factory laborer. Plaintiff's salary history is as follows:

1984	$ 87.30	1993	$ 12,167.98
1985	2,426.58	1994	5,540.69
1986	10,213.31	1995	9,747.67
1987	11,506.21	1996	9,536.02
1988	3,140.14	1997	7,272.78
1989	4,313.07	1998	771.00
1990	5,783.25	1999	6,657.80
1991	8,953.68	2000	11,150.66
1992	12,236.47	2001	3,007.38

(Tr. 38-52, 81-85.)

On January 11, 2002, Social Security Administration (SSA) employee J. Ostrum conducted an in-person interview with plaintiff regarding her claims. He found plaintiff had no difficulty in the following areas: hearing, reading, breathing, understanding, coherency, concentrating, talking, answering, standing, seeing, using her hands, and writing. Mr. Ostrum found plaintiff presented with difficulty sitting and walking. He further noted she shifted in her chair often, had an "exaggerated sway in hips as she walked, and appeared to be in pain." A February 2002, "Case Action Note[]" in plaintiff's claim file shows that Social Security evaluators found plaintiff's allegations were not credible and that her alleged impairments were not severe. (Tr. 77-80.)

In a February 5, 2002, claimant questionnaire, plaintiff reports that she has experienced chronic leg and hip problems since birth, which caused her constant pain upon movement and while standing still. Plaintiff reported taking Ibuprofen[2] for pain, and that she cannot take prescription pain medication as it affects her mind, makes her drowsy, and causes rashes and itching. Plaintiff reports the pain is in her

[2]"Ibuprofen is used to relieve the pain, tenderness, inflammation (swelling), and stiffness caused by arthritis and gout. It is also used to reduce fever and to relieve headaches, muscle aches, menstrual pain, aches and pains from the common cold, backache, and pain after surgery or dental work." Medline Plus at http://www.nlm.nih.gov/medlineplus/druginfo/medmaster/a682159.html (last visited July 20, 2005).

right hip, legs, knees, ankles, and feet and has worsened over the years. (Tr. 72, 76.)

With respect to activities of daily living, plaintiff lives in a single family home with her husband and stepdaughter. Plaintiff reports she "can do very little of anything." Plaintiff has to frequently change positions and shift her weight. Plaintiff states that she is able to prepare "at least one good meal a week," otherwise, her husband cooks or the family eats simple to prepare or take-out meals. Plaintiff further reports that she can stand to prepare a meal; however, "I know it will take away from other things I need to do like laundry or cleaning whatever needs to be done and I can't do it all." With respect to shopping, plaintiff states that she prefers going to smaller grocery stores; only going to the larger stores when she has a large amount of shopping to do or when her husband is unable to do the shopping. Plaintiff reports that she does not need assistance shopping, but it takes more time when she is alone. Regarding household chores, plaintiff reports that she does not "iron or dust and clean anything high." Plaintiff does laundry and makes the bed. She receives assistance from her husband and stepdaughter. (Tr. 73-74.)

Plaintiff reports watching television, but she is unable to sit through an entire program without having to stand. Plaintiff enjoys reading. Plaintiff has a driver's license--a Class A CDL. Plaintiff reports that she leaves her home approximately every other day, mostly for shopping purposes, but she tries to go out as little as possible as it is uncomfortable for her to drive or ride for extended periods. Plaintiff states that her mood has changed and she is "pretty grouchy." Plaintiff believes this is due to her pain and early onset of menopause. (Tr. 74-75.)

Plaintiff's medical records begin with treatment by Bart J. Coleman, D.C., on December 14, 2001. Plaintiff saw Dr. Coleman for back and neck pain after an automobile accident. At that time, plaintiff reported to Dr. Coleman that she always had back trouble, but it was worse after the accident. Dr. Coleman ordered plaintiff to remain off work until December 17, 2001; three days after her initial evaluation. (Tr. 117-20.)

On February 18, 2002, plaintiff was evaluated by Jack C. Tippitt, M.D. at SSA's request. On examination, Dr. Tippitt found plaintiff was pleasant and cooperative. She exhibited no cognitive problems. She walked without a limp and external assistance. Plaintiff was able to walk on her heels and toes. Plaintiff exhibited the ability to squat and then return to standing, bend straight until she reached 2 inches below her knees, dress and undress herself, and get on and off the examination table without assistance. (Tr. 112-13.)

Examination of plaintiff's neck revealed a normal range of motion with mild tenderness and no muscle spasms. Plaintiff's back appeared normal, evidenced no muscle spasms, and revealed muscle tenderness in the lumbar region. Plaintiff was able to tilt to 10 degrees to the right and 15 to the left. Plaintiff's shoulders, elbows, wrists, and hands were essentially normal with regard to range of motion, tenderness, strength, and appearance. Plaintiff's knees were essentially normal in similar regard. Plaintiff had essentially normal range of motion in both hips, complaining of deep pain in the right hip. Plaintiff exhibited calluses on the right foot, as well as mild restriction of dorsiflexion[3] of both feet and "mild hypesthesia[4] over the lateral aspect of the right foot." (Tr. 113.) Radiological examination of the right hip revealed "minimal irregularities in contour, right femoral head and neck." (Tr. 114.)

Dr. Tippitt ultimately concluded that plaintiff had: (1) chronic low back strain and right hip strain; (2) chronic neck strain; and (3) painful calluses of right foot. (Tr. 113.)

In July 2002, plaintiff reported that her hip and lower back pain were more unbearable every day limiting her ability to walk. Plaintiff also explained that she does not seek treatment from medical doctors because she does not take "addicting medications" due to her experiences with side-effects. She does not seek chiropractic treatment, because

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[3]Dorsiflexion is defined as "[t]urning upward of the foot or toes or of the hand or fingers." Stedman's Medical Dictionary, 464 (25th ed. 1990).

[4]Hypesthesia is defined as "diminished sensitivity to stimulation." Id. at 747.

"chiropractors leave me feeling worse every time." Plaintiff further reported that, when she worked, she would have to come home and immediately go to bed after the workday due to pain. Plaintiff further reiterated her inability to work due to chronic pain. (Tr. 64-69.)

A "Report of Contact" dated June 6, 2003, appears to relate to a correspondence between a Dr. London's office and SSA regarding plaintiff's referral to Dr. London for medical evaluation. The narrative states that plaintiff failed to attend the originally scheduled appointment for May 23, so the appointment was scheduled for 10:45 a.m. on June 6. Plaintiff, however, arrived at 11:45 after the doctor had left for the day. Apparently, Dr. London refused to reschedule the appointment, and his office returned the evaluation forms to SSA. (Tr. 60.)

On June 24, 2003, Susy Alias, M.D., completed a medical evaluation at SSA's request. Dr. Alias found plaintiff exhibited tingling and numbness in the right lower extremity, and has arthritis of the right hip. Plaintiff also has minor sinus allergies and lung problems due to smoking one and one-half packs of cigarettes a day for 19 years, and she has a history of ovarian surgeries in 1986 and 1987. (Tr. 99-100.)

Physical examination revealed that plaintiff was alert and oriented, with a fair memory and slow but functional thought process. Plaintiff presented as pleasant with appropriate affect. Plaintiff had normal vision and hearing functions, as well as normal heart sounds and rhythm. Plaintiff had normal range of motion in her neck, no muscle spasms, and no tenderness along her cervical spinous process. Plaintiff did not exhibit tenderness along the lumbar spine and had a normal range of motion. Plaintiff's balance was fair and she was able to walk unassisted, but with a limp. Plaintiff was able to get on and off the examination table. She was, however, unable to stand on her toes or her heels. Plaintiff presented with normal strength and range of motion in her upper extremities, as well as normal sensation and reflexes and a lack of swelling and tenderness. Plaintiff exhibited normal range of motion in her hips, with complaints of right hip pain. Her knees had normal range of motion, and showed no instability or tenderness. Plaintiff's feet were callused, and she experienced "mild restriction

of dorsiflexion and plantarflexion[5] on the right side only." Plaintiff showed a mild deformity on the right foot, which caused her limped gait. Her balance and standing, however, was fair. Plaintiff had some muscle atrophy[6] in the right foot. (Tr. 100-01.)

Dr. Alias summarized as follows:

> A 34 year-old, white female who has a history of arthritis in the right hip, history of chronic low back pain, deformity of the right foot, and history of neck pain. She has limitations in work-related activities. No limitations are noted in sitting, but she has limitations in physical activities like standing, walking, and lifting, carrying, handling objects. No hearing or speaking impairment was noted. She was noted to have fair understanding and fair memory, but has mild impairment in concentration and social interaction and poor adaptation to her physical disability.

(Tr. 101.)

On July 8, 2003, Dr. Alias completed a "Physical Residual Functional Capacity Assessment From." Dr. Alias found that plaintiff was able to sit 6 hours in an 8 hour work day, and stand, walk, and work, respectively, for 1 hour in an 8 hour work day due to right foot deformity and right hip pain. Dr. Alias further determined that plaintiff could frequently lift up to 10 pounds and occasionally lift 11-20 pounds citing poor balance. Dr. Alias assessed that plaintiff can occasionally carry 11-20 pounds, and can never carry 21 pounds or greater due to right ankle instability and pain. Moreover, Dr. Alias determined plaintiff can grasp, push, pull, and engage in fine manipulation with both hands, and plaintiff exhibits no disorder that would limit repetitive hand action. Plaintiff can use her left foot for repetitive movements, but not her right foot. (Tr. 103-04.)

Due to right hip and foot pain, plaintiff can frequently bend, reach above, and stoop; occasionally squat, climb, and crouch; and never crawl or kneel. Plaintiff can frequently tolerate exposure to noise,

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[5]Plantar is defined as "[r]elating to the sole of the foot." Id. at 1210. Flexion is defined as "[t]he act of flexing or bending." Id. at 595.

[6]Atrophy is defined as "a wasting of tissues, organs, or the entire body, as from death and reabsorption of cells, diminished cellular proliferation, decreased cellular volume, pressure, ischemia, malnutrition, lessened function, or hormonal changes." Id. at 151.

she can occasionally tolerate marked changes in temperature, driving automotive equipment, and exposure to dust, fumes and gases, and cannot tolerate exposure to unprotected heights and being around moving machinery. (Tr. 104-05.)

Dr. Alias determined plainitiff had a medically determinable physical impairment that could be expected to produce moderate pain.[7] These impairments include: arthritis of the right hip and foot, pain, foot deformity, and a history of neck pain. Dr. Alias found that plaintiff's pain limits her in physical activities, such as walking, standing, lifting, bending, sitting, pace and stamina, as well as affecting her concentration and mildly impairing social activities. (Tr. 106-07.)

Asked to state whether there are any medical reasons plaintiff should not work, Dr. Alias appeared to have checked "NO" and subsequently "scratched-out" the response. The doctor did not, however, check the answer "YES." In the narrative portion, Dr. Alias wrote "Due to pain and [right] foot deformity and decrease balance during standing and walking." (Tr. 108.)

B. Plaintiff's Hearing Testimony

The ALJ conducted a hearing on April 8, 2003, and plaintiff was not represented by counsel at the hearing. Plaintiff testified that she lives in a single family house with her husband and 11-year-old stepdaughter. Her husband is employed with a roofing company. Plaintiff completed high school through the ninth grade and later received her General Education Degree (GED). She currently does not have medical insurance. (Tr. 134-37, 144-45.)

Regarding her employment history, plaintiff testified that she was last employed in December 2001 as a part-time restaurant waitress. Plaintiff left this position due to multiple absences, as she was unable to get out of bed because of back numbness and swelling. Prior to working at the restaurant, plaintiff testified that she owned a

[7]Moderate pain is qualified as "could be tolerated but would cause marked handicap in the performance of the activity precipitating pain." (Tr. 106.)

restaurant, worked as waitress at other restaurants, worked in factories, and worked as a truck driver. Plaintiff testified that she was not successful as a truck driver, because "I just swelled and I just couldn't." (Tr. 138-40.)

With respect to her activities of daily living, plaintiff testified that she drives to the grocery store occasionally, but seldom drives otherwise. Plaintiff testified she does the household laundry, and her husband does "a lot of the cooking." Plaintiff testified she cleans the house when she has to, stating "I do the best I can." Plaintiff testified she is new in her community, therefore, she knows few people. She does, however, have friends who visit her at home. (Tr. 141-42.)

Regarding alleged physical limitations, plaintiff testified that she could not walk the length of the Creve Couer, Missouri, Social Security Office. When plaintiff sits, she testified that she repeatedly alternates between sitting and having to stand. Plaintiff was unaware of how long she could stand. Plaintiff can bend down to a point, however, she cannot bend over. Plaintiff testified she can use her hands, but does have carpal tunnel syndrome. Plaintiff testified that in order to maintain employment at a position where she can sit to accomplish work tasks, she would need to be given the freedom to alternate frequently between sitting and standing. (Tr. 142-43, 147.)

Plaintiff testified she is not under the care of a physician, because "I've had bad experiences with doctors." Plaintiff testified that she was "born crippled," has had multiple gynecological surgeries, and wore leg braces as a teenager. Plaintiff testified she has had severe back pain since her last gynecological surgery; however, she is unable to take prescription pain medication because she has had a "bad reaction to it" in the past. Plaintiff characterized her back pain as being a very sharp and constant pain located in the middle of her lower back, and she rates the pain as a 9 on a scale of 1 to 10. She takes

Ibuprofen and Tylenol[8] for the pain. Plaintiff also testified that she has an orthopaedic problem with her foot. (Tr. 143-49.)

C. The ALJ's Decision

In an August 8, 2003, decision denying benefits, the ALJ found that plaintiff did not have an impairment or combination of impairments, which meet or medically equal the requirements of the Social Security Administration's Listing of Impairments. The ALJ assessed plaintiff's eligibility for benefits based upon her alleged disabling conditions of birth defects affecting her hips, lower back and legs, and arthritis. (Tr. 11-12.)

Upon review of plaintiff's medical records, the ALJ found that the medical evidence did "not fully support [plaintiff's] allegations as to the intensity or persistence of her pain or other symptoms, or their effect on her ability to work." In making this determination, the ALJ noted that the only treatment record was for gynecological problems in August 2001. In December 2001, plaintiff saw a chiropractor for back and neck pain after a car accident. The chiropractor opined that plaintiff could return to work just a few days after the examination. The ALJ further noted that consultative examinations performed in February 2002 and July 2003, while finding plaintiff did have some orthopedic problems, essentially found that plaintiff had no significant functional or activities restrictions. (Tr. 13-14.)

The ALJ determined plaintiff's subjective complaints were not credible. This finding was based on the fact that plaintiff provided no evidence of on-going medical treatment or medication during the relevant periods, the fact that plaintiff provided no evidence of provider-imposed work restrictions, plaintiff's inconsistent work and earnings history, and plaintiff's appearance and demeanor. (Tr. 14-15.)

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[8]Tylenol (acetaminophen) is used "[f]or the temporary relief of minor aches and pains associated with headache, muscular aches, backache, minor arthritis pain, common cold, toothache, menstrual cramps and for the reduction of fever." Physician's Desk Reference, 1832 (55th ed. 2001).

Based on all the relevant evidence, the ALJ concluded that plaintiff has the following functional capacity: (1) occasionally lift 10 pounds; (2) sit a majority of the work day with some walking and standing; and (3) perform repetitive hand-finger actions. The ALJ found plaintiff could not return to her past, relevant work, however, she was able to perform a full range of sedentary work. (Tr. 15-17.)

The Appeals Council declined further review. Hence, the ALJ's decision became the final decision of defendant Commissioner subject to judicial review. (Tr. 2-4.)

In her appeal, plaintiff argues that the ALJ (1) failed to make a finding regarding her non-exertional impairments and (2) incorrectly used the Vocational Grids to find she was not disabled. (Doc. 22.)

II. DISCUSSION

A. General legal framework

The court's role on review is to determine whether the Commissioner's findings are supported by substantial evidence in the record as a whole. See Krogmeier v. Barnhart, 294 F.3d 1019, 1022 (8th Cir. 2002). "Substantial evidence is less than a preponderance but is enough that a reasonable mind would find it adequate to support the Commissioner's conclusion." Id.; accord Jones v. Barnhart, 335 F.3d 697, 698 (8th Cir. 2003). In determining whether the evidence is substantial, the court must consider evidence that detracts from, as well as supports, the Commissioner's decision. See Brosnahan v. Barnhart, 336 F.3d 671, 675 (8th Cir. 2003). So long as substantial evidence supports the final decision, the court may not reverse merely because opposing substantial evidence exists in the record or because the court would have decided the case differently. See Krogmeier, 294 F.3d at 1022.

To be entitled to benefits on account of disability, a claimant must prove that she is unable to perform any substantial gainful activity due to any medically determinable physical or mental impairment, which would either result in death or which has lasted or could be expected to last for at least 12 months. See 42 U.S.C. §§ 423(a)(1)(D), (d)(1)(A), 1382c(a)(3)(A) (2004). A five-step regulatory

framework governs the evaluation of disability in general. See 20 C.F.R. §§ 404.1520, 416.920 (2003); see also Bowen v. Yuckert, 482 U.S. 137, 140-41 (1987) (describing the framework); Fastner v. Barnhart, 324 F.3d 981, 983-84 (8th Cir. 2003). If the Commissioner can find that a claimant is or is not disabled at any step, a determination or decision is made and the next step is not reached. 20 C.F.R. § 404.1520(a)(4).

Step One asks whether the claimant is working and whether the work is "substantial gainful activity." 20 C.F.R. §§ 404.1520(b), 416.920(b). If so, disability benefits are denied. 20 C.F.R. §§ 404.1520(b), 416.920(b). If claimant is not, Step Two asks whether she has a "severe impairment," i.e., an impairment or combination of impairments which significantly limit her physical or mental ability to do basic work activities. 20 C.F.R. §§ 404.1520(c), 416.920(c). If she does not have a severe impairment or combination of impairments, the disability claim is denied. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the impairment is severe, Step Three asks whether the impairment is equal to an impairment listed by the Commissioner as precluding substantial gainful activity. 20 C.F.R. §§ 404.1520(d), 416.920(d). "If the impairment meets or equals one of the listed impairments, the claimant is conclusively presumed to be disabled." Bowen, 482 U.S. at 141. If the impairment is not one that meets or equals one of the listed impairments, Step Four asks whether the impairment prevents the claimant from doing work she has performed in the past. 20 C.F.R. §§ 404.1520(e), 416.920(e). To determine whether a claimant can perform her past relevant work, the ALJ assesses and makes a finding about the claimant's residual functional capacity, (RFC) based on all the medical and other evidence in the case record. 20 C.F.R. § 404.1520(e); see 20 C.F.R. § 404.1545(a)(1) (2003) (RFC is the most a claimant can do despite her limitations).

The claimant has the burden of showing that she is unable to perform her past relevant work. Haley v. Massanari, 258 F.3d 742, 747 (8th Cir. 2001). If she is able to perform her previous work, she is not disabled, 20 C.F.R. §§ 404.1520(f), 416.920(f), and Step Five, which concerns an adjustment to other work, 20 C.F.R. §§ 404.1520(g)(1), 416.920(g)(1), is not reached.

B. The ALJ's Reliance on the Medical-Vocational Guidelines

Plaintiff argues that, because she has non-exertional impairments (pain), and because her RFC was not shown to contain all the characteristics necessary to perform a full array of sedentary work, the ALJ erred in relying on the Medical-Vocational Guidelines (Grids)[9] to find plaintiff was not disabled. The undersigned disagrees finding the ALJ's reliance on the Grids was proper.

Generally, when a decision cannot be made on the medical considerations alone, a disability claimant can properly be evaluated under the Grids, which take administrative notice of whether a significant number of jobs exist in the national economy for a person with a certain RFC, age, education, and work experience. Heckler v. Campbell, 461 U.S. 458 (1983). Proper reliance on the Grids eliminates the need for the Commissioner to consider and rely upon the testimony of a vocational expert. McCoy v. Schweiker, 683 F.2d 1138, 1148 (8th Cir. 1982) (en banc).

The law is clear, though, that the Grids may not be used in the case of a claimant who suffers from one or more non-exertional limitations. Simons v. Sullivan, 915 F.2d 1223, 1225 (8th Cir. 1990). However, if the claimant's characteristics do not differ "significantly" from those contemplated in the grids, i.e., whether the non-exertional impairments preclude the claimant from engaging in the full range of activities listed in the guidelines under the demands of day-to-day life, the ALJ may rely on the Grids alone to direct a finding of disabled or not disabled. See Lucy v. Chater, 113 F.3d 905, 908 (8th Cir. 1997); see also Marshall v. Heckler, 731 F.2d 555, 557 (8th Cir. 1984) ("Unless the ALJ rejects the subjective evidence of pain for some legally sufficient reason, . . . it is improper to rely on the grid as directing a finding of eligibility."); cf. Fenton v. Apfel, 149 F.3d 907, 911 (8th Cir. 1998) (since the claimant could not perform the "full range" of light work under those circumstances, reliance upon the grids

[9]See 20 C.F.R. Part 404, Subpart P, Appendix 2.

is not permitted); Frankl v. Shalala, 47 F.3d 935, 937 (8th Cir. 1995) (same); Talbott v. Bowen, 821 F.2d 511, 515 (8th Cir. 1987) (same) .

A non-exertional impairment is defined as "[l]imitations or restrictions which affect your ability to meet the demands of jobs other than the strength demands, that is, demands other than sitting, standing, walking, lifting, carrying, pushing or pulling . . . ." See 20 C.F.R. § 416.969a(a). The parties do not dispute the fact that limitations due to pain can be characterized as a non-exertional limitation. The instant dispute centers around whether the ALJ made adequate findings regarding plaintiff's non-exertional limitations, and whether those impairments affect her ability to engage in substantial, gainful employment in the full spectrum of sedentary work. To make this inquiry, the undersigned must first determine if the ALJ satisfactorily discredited plaintiff's subjective complaints of pain, and, if so, whether the ALJ's RFC assessment is supported by substantial evidence of record.

1. The ALJ's Credibility Determination

Assessing a claimant's credibility is primarily the ALJ's function. See Holstrom v. Massanari, 270 F.3d 715, 721 (8th Cir. 2001) ("The credibility of a claimant's subjective testimony is primarily for the ALJ to decide, not the courts."); Anderson v. Barnhart, 344 F.3d 809, 815 (8th Cir. 2003) (finding a claimant's credibility is primarily a matter for the ALJ to decide). In Singh v. Apfel, the Eighth Circuit held that an ALJ who rejects subjective complaints (of pain) must make an express credibility determination explaining the reasons for discrediting the complaints. Singh, 222 F.3d 448, 452 (8th Cir. 2000).

The Eighth Circuit held in Polaski v. Heckler that an ALJ cannot reject subjective complaints of pain based solely on the lack of medical support, but instead must consider various factors. 739 F.2d 1320, 1322 (8th Cir. 1984). The factors include, in part, observations by third parties and treating and examining physicians relating to such matters as (1) the claimant's daily activities; (2) the duration, frequency, and intensity of the pain; (3) precipitating and aggravating factors; (4)

dosage, effectiveness, and side effects of medication; and (5) functional restrictions. Id.

In the case at bar, the ALJ referred to credibility determinations under Polaski, and he specifically stated that his credibility determination was "[b]ased on the evidence as a whole, not just the objective medical findings or personal observations . . . ." (Tr. 15.) In reaching his decision that plaintiff's complaints of pain were not fully credible, the ALJ relied on her "lack of treatment and medication, the objective medical findings, her activities, including work activity, her lack of work restrictions, and her appearance and demeanor. . . ." Id.; see Gwathney v. Chater, 104 F.3d 1043, 1045 (8th Cir. 1997) ("The ALJ may discount subjective complaints of physical and mental health problems that are inconsistent with medical reports, daily activities, and other such evidence.").

"The ALJ may properly consider both the claimant's willingness to submit to treatment and the type of medication prescribed in order to determine the sincerity of the claimant's allegations of pain." Thomas v. Sullivan, 928 F.2d 255, 259 (8th Cir. 1991) (citations omitted). A review of the record shows that while plaintiff reports life-long pain, she proffered no medical records establishing her impairments or treatment. See Kelley v. Barnhart, 372 F.3d 958, 961 (8th Cir. 2004) ("Infrequent treatment is also a basis for discounting a claimant's subjective complaints."); Holley v. Massanari, 253 F.3d 1088, 1092 (8th Cir. 2001); Benskin v. Bowen, 830 F.2d 878, 884 (8th Cir. 1987) ("The ALJ was certainly entitled to find [claimant's] failure to seek medical attention inconsistent with her complaints of pain.").

Plaintiff alleges that she cannot take prescription pain medication due to unpleasant side-effects; however, she provides no record evidence indicating a prior history of prescription pain medication use or attempt to find pain medication with limited side-effects, documentation of alleged side-effects, or evidence of effort to seek alternative treatment to pain medication. See Depover v. Barnhart, 349 F.3d 563, 566 (8th Cir. 2003) ("The failure to request pain medication is an appropriate consideration when assessing the credibility of a claimant's complaints of pain."); Johnson v. Chater, 87 F.3d 1015, 1017 (8th Cir.

1996) (citing Haynes v. Shalala, 26 F.3d 812, 814 (8th Cir. 1994) ("[A] claimant's failure to take strong pain medication is "inconsistent with subjective complaints of disabling pain.")).

Plaintiff alleges she does not have the financial resources or health insurance to obtain medical treatment. Dover v. Bowen, 784 F.2d 335, 337 (8th Cir. 1986) ("[T]he ALJ must consider a claimant's allegation that he has not sought medical treatment or used medications because of a lack of finances."); see also Hutsell v. Sullivan, 892 F.2d 747, 751 n.2 (8th Cir. 1989) ("It is for the ALJ in the first instance to determine a claimant's real motivation for failing to follow prescribed treatment or seek medical attention.").

While plaintiff did testify that she currently has no health insurance, she also stated at the hearing that she does not have insurance coverage through her husband's work "any more [sic]," and went on to state that "And even with insurance . . . ." Plaintiff's hearing testimony supports the fact that she has had health insurance in the past and, arguably, was not apt to seek medical treatment even with insurance coverage. Moreover, there is no evidence in the record to suggest plaintiff attempted to obtain treatment or assistance, or was prevented from obtaining care due to a lack of insurance or finances. See Osborne v. Barnhart, 316 F.3d 809, 812 (8th Cir. 2003) (recognizing that a lack of funds may justify a failure to receive medical care; however, a plaintiff's case is buttressed by evidence he related of an inability to afford prescriptions and denial of the medication); Riggins v. Apfel, 177 F.3d 689, 693 (8th Cir. 1999) ("Although [plaintiff] claims he could not afford such medication, there is no evidence to suggest that he sought any treatment offered to indigents or chose to forego smoking three packs of cigarettes a day to help finance pain medication."); Murphy v. Sullivan, 953 F.2d 383, 386 (8th Cir. 1992) (noting that financial hardships can be considered in determining whether to award benefits; however, that is not of itself determinative. The court found compelling that plaintiff presented no evidence she sought out low-cost medical treatment, or was denied treatment due to lack of finances).

The only medical records for review are from Dr. Coleman (a chiropractor) and two physicians referred by SSA to evaluate plaintiff's medical condition (Drs. Tippitt and Alias). Dr. Coleman saw plaintiff after she complained of pain from a car accident. While plaintiff did note she had a history of back problems, that is the extent of the discussion with regard to her chronic pain. Notably, Dr. Coleman found plaintiff would be able to return to work three days after his evaluation. Even if Dr. Coleman's assessment buttressed plaintiff's allegations, it would not, itself, amount to substantial evidence. See 20 C.F.R. § 404.1513(a); Ingram v. Chater, 107 F.3d 598, 604 n.4 (8th Cir. 1997) ("Under the regulations, chiropractors are not considered 'acceptable medical sources.'").

Similarly, neither would any single opinion of Drs. Tippitt and Alias, as the opinion of a one-time, examining physician does not generally amount to substantial evidence. See Cox v. Barnhart, 345 F.3d 606, 610 (8th Cir. 2003); Jenkins v. Apfel, 196 F.3d 922, 925 (8th Cir. 1999) (quoting Kelley v. Callahan, 133 F.3d 583, 589 (8th Cir. 1998) ("'The opinion of a consulting physician who examines a claimant once or not at all does not generally constitute substantial evidence.'")).

Reviewing Dr. Tippitt's report, he noted that plaintiff exhibited some pain on examination and reported a history of pain; however, he identified no known etiology for her complaints. Moreover, radiological examination of plaintiff's right hip was essentially normal showing only minimal irregularities. Similarly, Dr. Alias noted plaintiff's self-reported history of pain. Upon examination, Dr. Alias did not establish any source for plaintiff's pain, beyond stating that she has a history of pain and a right foot deformity. See Stormo v. Barnhart, 377 F.3d 801, 805-06 (8th Cir. 2004) ("[Physician] opinions are given less weight if they are inconsistent with the record as a whole or if the conclusions consist of vague, conclusory statements unsupported by medically acceptable data.").

The ALJ also adverted to plaintiff's earnings history as indicative of her credibility. A poor work history can lessen a claimant's credibility. Woolf v. Shalala, 3 F.3d 1210, 1214 (8th Cir. 1993); see King v. Apfel, 991 F. Supp. 1101, 1108 (E.D. Mo. 1997). The ALJ noted

that plaintiff has had modest earnings, which have varied widely over the years. The undersigned acknowledges that plaintiff's overall earnings can be expected to be less given her lack of higher education. To this end, the fact that plaintiff earned little more than $12,000.00 a year in her last fifteen years of employment is not, by itself, indicative of a poor earnings history. However, as the ALJ noted, the fact that her earnings vary extensively over that time period bears some consideration in determining her credibility under Polaski. See Polaski, 739 F.2d at 1322.

With respect to her activities of daily living, the ALJ noted that plaintiff testified at the hearing that she drives on occasion, she goes to the grocery store with assistance, she does laundry, and "[s]he does the best she can" around the house. (Tr. 12.) A review of the record reveals that plaintiff can prepare simple meals and at least "one good meal per week." Plaintiff states she can stand to prepare meals, but believes doing so will take away from her ability to complete other household chores. Plaintiff further reports she does not need assistance shopping. Plainitiff can do laundry, make the bed, and engage in other household activities with assistance. See Pena v. Chater, 76 F.3d 906, 908 (8th Cir. 1996) (affirming ALJ's discount of claimant's subjective complaints of pain where claimant was able to care for one of his children on daily basis, drive car infrequently, and go grocery shopping occasionally); Woolf, 3 F.3d at 1213 (plaintiff lived alone, drove, shopped for groceries and did housework with some help from neighbor).

While some of this information was not specifically referenced by the ALJ, he is not required to detail every piece of evidence, and a failure to make citations to the entire record does not mean it was not considered. Wheeler v. Apfel, 224 F.3d 891, 895 n.3 (8th Cir. 2000); Black v. Apfel, 143 F.3d 383, 386 (8th Cir. 1998) ("[A]n ALJ is not required to discuss every piece of evidence submitted. An ALJ's failure to cite specific evidence does not indicate that such evidence was not considered . . . ."") (internal citations omitted); cf. McGinnis v. Chater, 74 F.3d 873, 875 (8th Cir. 1996) (asserted errors in

opinion-writing do not require a reversal if the error has no effect on the outcome).

It is not within the undersigned's purview to redetermine plaintiff's credibility. As long as there is substantial evidence in the record, the ALJ's decision will be upheld even if substantial evidence exists adverse to the ALJ's findings. See Krogmeier, 294 F.3d at 1022; Dixon v. Sullivan, 905 F.2d 237, 238 (8th Cir. 1990) ("ALJs must seriously consider a claimant's testimony about pain, even when . . . subjective. But questions of credibility are for the trier of fact in the first instance. If an ALJ explicitly discredits a claimant's testimony and gives a good reason for doing so, we will normally defer to that judgment."); cf. Orrick v. Sullivan, 966 F.2d 368, 372 (8th Cir. 1992) (quoting Baker v. Sec'y of Health and Human Servs., 955 F.2d 552, 555 (8th Cir. 1992) (quoting Benskin v. Bowen, 830 F.2d 878, 883 (8th Cir. 1987) ("No one, including the ALJ, disputes that plaintiff has pain . . . . The question is 'whether she is fully credible when she claims that her back hurts so much that it prevents her from engaging in her prior work.'"))).

Reviewing the record *in toto*, the undersigned concludes the ALJ did not err in concluding plaintiff's subjective complaints of pain were not fully credible or as limiting as she advances.

2. The ALJ's RFC Determination

Having determined the ALJ made an adequate credibility determination, the undersigned must look to the ALJ's RFC determination and whether his findings in this regard are supported by substantial evidence. An RFC determination is a medical issue, Singh, 222 F.3d at 451, which requires consideration of supporting evidence from a medical professional. Lauer v. Apfel, 245 F.3d 700, 704 (8th Cir. 2001). The ALJ is required to determine plaintiff's RFC based on all the relevant evidence. See Anderson v. Shalala, 51 F.3d 777, 779 (8th Cir. 1995); 20 C.F.R. §§ 404.1546, 416.946 (2001).

The ALJ found that plaintiff retained the capacity to occasionally lift 10 pounds; sit a majority of the work day with some walking and standing; and perform repetitive hand-finger actions. From these

conclusions, the ALJ determined plaintiff retained the RFC to engage in the full range of "Sedentary work" defined by SSA regulations to include:

> lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

20 C.F.R. § 404.1567(a); SSR 96-9P, 1996 WL 374185 at *3 (SSA July 2, 1996) ("Occasionally" as it relates to sedentary work is defined as "occurring from very little up to one-third of the time, and would generally total no more than about 2 hours of an 8-hour workday").

With respect to work at the sedentary occupational base, SSA regulations provide that a claimant's ability to stand or walk "slightly less than 2 hours" per workday would not significantly erode the occupational base, but the ability to stand or walk for only a "few minutes" per workday would significantly erode the occupational base. See id. at *6. "For [claimants] able to stand and walk in between the slightly less than 2 hours and only a few minutes, it may be appropriate to consult a vocational resource." Id. (in the sedentary occupation base, individuals must be able to remain seated during the workday, "with a morning break, a lunch period, and an afternoon break at approximately 2-hour intervals").

The ALJ is only required to consider plaintiff's credible impairments supported by the record in determining her RFC. See Tucker v. Barnhart, 363 F.3d 781, 783 (8th Cir. 2004) ("The ALJ must assess a claimant's RFC based on all relevant, credible evidence in the record. . . ."); Hilkemeyer v. Barnhart, 380 F.3d 441, 446 (8th Cir. 2004). As previously discussed, the ALJ found that plaintiff's subjective complaints of pain and reported functional limitations were not fully credible.

Although plaintiff's allegations of significant non-exertional impairments, if believed, would generally prohibit reliance on the Grids, the ALJ's evaluation of plaintiff's credibility demonstrated that her credible impairments would not have sufficiently eroded her ability to perform a full range of sedentary work during the relevant period.

See Shannon v. Chater, 54 F.3d 484, 488 (8th Cir. 1995); Mitchell v. Shalala, 25 F.3d 712, 714 (8th Cir. 1994); Hutsell v. Sullivan, 892 F.2d 747, 750 (8th Cir. 1989).

Moreover, with respect to the medical evidence, the ALJ was not required to accept Dr. Alias's assessment in its entirety. See Ellis v. Barnhart, 392 F.3d 988, 994 (8th Cir. 2005) ("[A]lthough medical source opinions are considered in assessing RFC, the final determination of RFC is left to the Commissioner."). As a one-time, consulting examiner, Dr. Alias's evaluation does not, by itself, equate to substantial evidence. See Cox v. Barnhart, 345 F.3d 606, 610 (8th Cir. 2003) ("We have stated many times that the results of a one-time medical evaluation do not constitute substantial evidence on which the ALJ can permissibly base his decision."); see, e.g., Jenkins v. Apfel, 196 F.3d 922, 925 (8th Cir. 1999) (stating that the opinion of a consultative physician does not generally satisfy the substantial evidence requirement); cf. Ellis, 392 F.3d at 997 (affirming the district court's opinion discrediting the treating physician's assessment that plaintiff could not sit for more than one hour at a time and determining plaintiff's RFC allowed for the full spectrum of sedentary work).

Dr. Alias's assessment is not supported by any other medical evidence supporting plaintiff's alleged limitations. See 20 C.F.R. § 404.1512(c) ("Your responsibility. . . . You must provide evidence showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your case."); Eichelberger v. Barnhart, 390 F.3d 584, 591 (8th Cir. 2004) ("A disability claimant has the burden to establish [his] RFC."). The other consultative examiner Dr. Tippitt, while not specifically completing a RFC assessment, provided a narrative, radiology report, and a report of range of motion values. Nowhere in these documents does Dr. Tippitt assess a restriction on plaintiff akin to Dr. Alias. Moreover, with the exception of the radiological examination of plaintiff's hip, neither physician based his or her assessment on any diagnostic tool other than one examination and plaintiff's historical narrative. See Lauer, 245 F.3d at 705 ("Generally, even if a consulting physician examines a Social Security

disability claimant once, his or her opinion is not considered substantial evidence . . . ."); accord Charles v. Barnhart, 375 F.3d 777, 783 (8th Cir. 2004).

Even if Dr. Alias's opinion was entitled to substantial deference, it does not necessarily follow that the ALJ was required to consult a VE. As aforementioned, SSA regulations allow for an individual with the ability to stand or walk less than 2 hours a day to engage in the full range of sedentary work, and provide that the ALJ *may* find it appropriate to consult a VE should he find a claimant's abilities fall somewhere within the relevant spectrum. See 1996 WL 374185 at *6. The regulations stop short of providing a blanket requirement.

Accordingly, the undersigned finds that both the ALJ's credibility and RFC determination were supported by substantial evidence of record. Therefore, because the ALJ properly found plaintiff's impairments do not substantially erode the full spectrum of work at the sedentary level, application of the Grids was proper and not in error.

RECOMMENDATION

For the reasons set forth above, it is the recommendation of the undersigned that the decision of the Commissioner of Social Security be affirmed under sentence 4 of 42 U.S.C. § 405(g).

The parties are advised that they have ten (10) days in which to file written objections to this Report and Recommendation. The failure to file timely written objections may waive the right to appeal issues of fact.

DAVID D. NOCE
UNITED STATES MAGISTRATE JUDGE

Signed on September 7, 2005.